(2005) 02 AP CK 0071

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1257 of 2005 and W.P.M.P. No. 1658 of 2005

Cairn Energy India Private Limited APPELLANT

Vs

C.B.E. and C. RESPONDENT

Date of Decision : 07-02-2005

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Oil Industries (Development) Act, 1974 — Section 15, 15(1), 15(2), 15(4)

Citation : (2005) 123 ECR 15 : (2005) 183 ELT 3

Hon'ble Judges : T. Ch. Surya Rao, J;M.H.S. Ansari, J

Bench : Division Bench

Advocate : C.V. Nagarjuna Reddy, for the Appellant; A. Rajasekhara Reddy, SCGSC, for the Respondent

Judgement

M.H.S. Ansari, J.—Though several contentions have been raised, we shall refer only to certain relevant contentions and that too for the purposes of the interim orders prayed for, as after having heard the learned counsel for the petitioner, we are inclined to admit the writ petition which raises a question as to the jurisdiction of the respondent authorities to levy and consequently to demand payment of interest on alleged delayed payment of cess.

2. One of the contentions at the threshold raised by Mr. A. Rajasekhara Reddy, learned Senior Standing Counsel for Central Government, was as to the maintainability of the writ petition on the ground of availability of alternative efficacious remedy of appeal against the impugned order levying interest. We are inclined to admit the writ petition, as noticed above, the question as to the very jurisdiction to levy interest is raised, the petitioner having taken a conscious decision to test the impugned order on the ground of jurisdiction.

3. By an Act No. 47 of 1972, Oil Industry (Development) Act, 1974 (for short ''OID Act'') was enacted for establishment of a Board for development of oil industry and for that purpose to levy a duty of excise on crude oil and natural gas. Section 15 of that Act is the charging section and lays down that there shall

be levied and collected, as a cess on every item specified in column 2 a duty of excise at such rate not exceeding the rate set forth in the corresponding entry in column 4 of the Schedule as the Central Government may, by notification, specify. There is no dispute that crude oil produced by the petitioner is exigible to cess. There is also no dispute as to the rate. The petitioner has paid cess levied u/s 15(1) of OID Act. Sub-section (2) of Section 15 upon which much reliance is placed reads as under.

"(2) Every duty of excise leviable under Sub-section (1) on any item shall be payable by the person by whom such item is produced and in the case of crude oil, the duty of excise shall be collected on the quantity received in a refinery."

4. It is the case of the petitioner (producer of crude oil) that in terms of Section 15(2) of the OID Act, duty of excise in the form of cess shall be collected on the quantity received in refineries (buyer). The contention is that there is a fundamental difference on the relevant point at which the quantity is ascertained for the purpose of payment of cess between crude oil under OID Act and goods under the Central Excise Act (C.E. Act). The difference, it is contended, lies in the fact that duty is determined on the goods at the point where they are removed from manufacturing process under the C.E. Act whilest the cess is payable when it is received in refinery in the case of OID Act. This contention, prima facie, in our view, finds support from the provisions in Section 15(2) of the OID Act and the Circular No. 18/1988, dated 20th May, 1988 prescribing the procedure for payment of the cess on crude oil. Under this circular, oil producing companies shall debit the amounts of cess on receipt of information on the actual quantity of net crude oil received by refineries and within 20 days after the close of each month oil producing companies shall file monthly returns in this regard. The monthly returns and PLA Register are to be the basis for finalisation of the assessment of cess. In case of difference, a show cause notice is to be served upon the oil producing companies requiring them to make payment of the amount of cess within ten days of service of notice.

5. As per the provisions of OID Act under which the cess is realised, the date on which the crude oil is removed from the place where it is produced, is the date for determination of the rate of cess and the quantity on which the cess is required to be paid is the quantity which is received in the refinery or the factory. The petitioner expressed certain difficulty in obtaining authenticated receipt of quantities from the refineries in time. They were paying cess on the basis of the despatch data by 20th of the following month. The Commissioner (C.E.), however, relying upon Rule 8 of C.E. Rules modified the procedure outlined in Trade Notice No. 13/2001, dated 14-3-2001 and directed that based on the quantity despatched during the month, the petitioner shall make payment in the PLA by due date i.e., 5th of the following month. On receipt of quantity received data from the refineries, the petitioner shall carry out reconciliation at his end. In case of difference in quantity despatched and quantity received, the assessee shall pay difference within the month of reconciliation along with interest for the

delayed payment. One of the grievances of the petitioner is with regard to jurisdiction of second respondent to prescribe the due date contrary to the said Notification No. 18/1988, dated 20th May 1988 for the purpose of payment of cess by the petitioner. While insisting upon the due date which has been determined as per Rule 8 of Central Excise Rules as 5th of the following month, respondent authorities are insisting on payment of interest for the ''delayed'' payment of cess. The petitioner inter alia seeks a direction upon respondent Central Excise authorities to follow Govt. of India''s Notification No. 18/1988 . These are questions which can appropriately be considered at the hearing of the writ petition. The questions are nevertheless one relating to jurisdiction apart from the applicability of the substantive provisions of the C.E. Act and the Rules made thereunder to the cess under the OID Act.

6. Interim relief prayed for is with regard to recovery of interest levied for delayed payment of cess based upon Rule 8 of the Central Excise Rules.

7. Relying upon the judgment of the Supreme Court in India Carbon Ltd. v. State of Assam 106 STC 460 (SC), it is contended by Mr. C.V. Nagarjuna Reddy, as held therein, that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges tax makes a substantive provision in this behalf. It was contended by Mr. C.V. Nagarjuna Reddy, learned counsel for the petitioner that OID Act makes no provision for levy of such interest on delayed payment of cess. On the other hand, Mr. A. Rajasekhara Reddy, learned Senior Standing Counsel for Central Government contends that by subsection (4) of Section 15 of OID Act, provisions of C.E. Act and the rules made thereunder are made applicable in relation to levy and collection of duties. Levy of interest at the rate specified in the C.E. Rules is thus sought to be justified on the ground that power is to be found in the C.E. Act under the Chapter pertaining to levy of collection of duties which is made applicable by virtue of subsection (4) of Section 15 of OID Act.

8. The levy of interest for delayed payment of cess is not provided under the OID Act, 1974. The provisions of C.E. Act are made applicable as far as may be in relation to levy and collection of duties.

9. On the authority of the judgment in India Carbon Ltd. (supra), we are prima facie of the view that OID Act is the substantive law that is applicable and does not provide for levy of interest. The provisions of C.E. Act are applicable for procedural purposes in relation to levy and collection of duties. There being no substantive provision in the OID Act, levy of interest can be by substantive provision only, we are of the view that prima facie case is made out the petitioner for grant of interim directions.

10. Accordingly, pending consideration of the contentions raised in the writ petition, there shall be a direction upon third and fourth respondents not to take any coercive steps for recovery of the interest demanded by the said respondents from the petitioner for the period relating to April 2001 to February

2004, pending disposal of the writ petition. Liberty, however, is reserved to the respondents to apply for modification/vacation of the above interim orders upon notice to learned counsel for the petitioner.

